

IN THE SUPREME COURT OF THE STATE OF MISSOURI

ARTHUR L. LEBEAU, Jr., et al.,

Appellants,

vs.

COMMISSIONERS OF FRANKLIN
COUNTY, MISSOURI,

Respondents.

Case No. SC94348

Appeal from the Circuit Court of Franklin County
The Honorable Robert D. Schollmeyer, Judge

**AMENDED BRIEF OF RESPONDENTS, COMMISSIONERS OF
FRANKLIN COUNTY, MISSOURI**

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STATEMENT OF FACTS

Appellants Arthur Lebeau, Eric Reichert (hereinafter “Appellants”) and eight other Plaintiffs (hereinafter collectively “Plaintiffs”) filed their original Petition on October 30, 2012. R. 4. Plaintiffs’ original Petition alleged that House Bill 1171 is unconstitutional under the single subject and original purpose provisions of the Missouri Constitution and that Commission Order 2012-260 establishing the Franklin County Municipal Court is void. R. 17.

The Commissioners of Franklin County (hereinafter “Respondents”) submitted to the Personal Jurisdiction of the trial Court on November 16, 2012 when Matthew C. Becker signed and had filed an Entry of Appearance on behalf of Respondents. R. 4. That same day, Respondents also filed their Motion to Dismiss Plaintiffs’ Petition for lack of standing. *Id.* On November 26, 2012, Plaintiffs filed their Motion to “Deny Defendants’ ‘Entry of Appearance’” and “Deny Defendants’ ‘Dismissal Motion.’” R. 5.

On January 11, 2013, the trial Court heard argument on Defendants’ Motion to Dismiss. R. 6. On January 25, 2013, the trial Court granted Defendants’ Motion to Dismiss on grounds that Plaintiffs lacked standing to file same. *Id.* The trial Court allowed Appellants until March 1, 2013 to file an amended Petition in accordance with Missouri Supreme Court Rule 67.06. *Id.*

On February 26, 2013 Appellants filed their Amended Petition striking Count II from their original Petition, which stated in relevant part, “though Franklin County could possibly set up a municipal court, it could not prosecute any violations.” R. 7. The Appellants stated that they did not include Count II because the Amended Petition was

directed to the “Constitutional issue.” R. 37. On March 15, 2013 Defendants filed a Motion to Dismiss Plaintiffs’ Amended Petition for lack of standing for failure to state a claim upon which relief could be granted. R. 7. On March 22, 2013 Appellant, Eric Reichert filed his “Motion to Dismiss as Defendant’s alleged representative lacks the legal status to stand before this Court.” [sic] *Id.*

On March 22, 2013, the trial court heard argument on Respondents’ Motion to Dismiss Plaintiffs’ Amended Petition and Appellants’ Motion to Dismiss Defendant’s Alleged Representative. *Id.* On March 28, 2013 the trial Court dismissed Appellants’ Amended Petition, and found that the dismissal rendered Appellants’ “Motion to Dismiss Defendant’s Alleged Representative” moot. R. 8.

On May 3, 2013, Appellants filed their Notice of Appeal to the Eastern District of the Missouri Court of Appeals. *Id.* The Court of Appeals then transferred the case to this Court because it found that the petition questioned the Constitutional validity of a state statute. *Id.* On February 27, 2014, this Court reversed and remanded this case back to the circuit court. R. 9.

On May 21, 2014, Respondents filed their Second Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted. R. 10. On May 29, 2014, this cause was called for trial on Appellant’s Amended Petition. R. 11. The trial court entered its Judgment for Respondents, finding that Appellants’ prayer for relief seeks an advisory opinion, that House Bill 1171 does not violate the single subject and the original purpose provisions of the Missouri Constitution, and that the Appellants fail to contest the validity

of Senate Bill 636, which gives independent legislative authority for the amendments to Section 67.320, RSMo. *Id.*

On July 17, 2014, Appellants filed their Notice of Appeal in this Court. R. 3. On August 27, 2014, Matthew Becker moved this Court to withdraw as counsel for the Respondents and to substitute Steven White. The following day this Court sustained his motion. On September 8, 2014, Respondents filed a Motion to Dismiss before this Court because the issue is moot due to the passage of Senate Bill 621 which was effective September 28, 2014 and repealed Sec. 67.320 and enacted a new Section 67.320 in its place.

ARGUMENT

Standard of Review

The trial court entered its Judgment for Respondents, finding that Appellants' prayer for relief seeks an advisory opinion, that House Bill 1171 did not violate the single subject and the original purpose provisions of Article III, section 21 and 23 of the Missouri Constitution, and that the Appellants failed to contest the validity of Senate Bill 636, which gives independent legislative authority for the amendments to Section 67.320, RSMo. This appeal only presents questions of law, which the Court affords *de novo* review. *Ochoa v. Ochoa*, 71 S.W.3d 593, 595 (Mo. banc. 2002).

One issue of this appeal is the constitutional validity of House Bill 1171, which amended Section 67.320. Acts of the legislature carry a presumption of constitutionality. *Missouri Health Care Ass'n v. Attorney General of the State of Missouri*, 953 S.W.2d

617, 622 (Mo. banc. 1996). “A party asserting that a bill has violated the single subject limitation in Article III, section 23 has the burden to prove that the bill clearly and undoubtedly has more than one subject.” *Id.* Here, Appellants carry the burden to prove that the House Bill is unconstitutional.

I. APPELLANTS’ CHALLENGE TO HOUSE BILL 1171 WHICH ENACTED SECTION 67.370 IS MOOT BECAUSE THE GENERAL ASSEMBLY HAS REPEALED SECTION 67.370 WITH THE RECENT PASSAGE OF SENATE BILL 621

A threshold issue to any appellate review is the mootness of the controversy. *State ex. Rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo. 2001). Mootness is a question of justiciability, and appellate courts may dismiss a case *sua sponte* when the case is moot. *Id.* A case is moot “when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy.” *Bank of Washington v. McAuliffe*, 676 S.W.2d 483, 487 (Mo. banc 1984).

Here, the Appellants’ allegation that House Bill 1171 is unconstitutional is a moot issue, because the General Assembly enacted Senate Bill 621 repealing Section 67.370 and has passed Senate Bill 621, enacting a new Section 67.370, effective August 28, 2014. *See Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. 2013) (stating that this Court may take judicial notice of a bill, just as it does of statutes). This Court has held in *Humane Society of United States v. State* that if a petition fails to challenge the current version of a statute and seeks relief under the repealed version of a statute, the claim is

moot. 405 S.W.3d 532, 538 (Mo. banc 2013). In *Humane Society*, the appellants challenged the constitutionality of Senate Bill 795, repealing and reenacting section 273.327, which eliminated animal shelters as entities exempt from the payment of fees. *Id* at 534. They challenged the bill as a violation of the original purpose provision of the constitution. *Id* at 533. Subsequently, the General Assembly passed Senate Bill 161, repealing and reenacting section 273.327. *Id.* at 534. Therefore, this Court dismissed the appellants' case as moot. *Id.* at 539. This Court reasoned that it did not want to disturb the legislative process that already corrects unconstitutional statutes. *Id.* at 537. This Court stated that "the only mechanism to correct a defective enactment would be a law suit rather than action by the legislature. There is no reasonable purpose in perpetuating the existence of defective statutes until challenged in a law suit, and the language of article III, section 21 does not compel such result." *Id.*

The facts in *Humane Society* are analogous to the case here. Like the statute in *Humane Society*, Section 67.370 establishing municipal courts has been repealed and reenacted since the time the Appellants' have filed their petition. The constitutional validity of House Bill 1171 is no longer at issue, because the General Assembly has enacted a new statute. Therefore, this case is moot, and the Court must dismiss it.

II. THE COURT SHOULD DISMISS THIS CASE BECAUSE APPELLANTS HAVE FAILED TO COMPLY WITH RULE 84.04.

Missouri Supreme Court Rule 84.04(d) requires that appellants provide a section of "Points Relied On" which (1) identifies the trial court ruling or action that the appellant challenges; (2) states concisely the legal reasons for the appellant's claim of

reversible error; and (3) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error. Compliance with Rule 84.04 is mandatory. *Myrick v. Eastern Broad., Inc.*, 970 S.W.2d 885, 886 (Mo. App. 1998).

“Deficient points relied on force the appellate court to search the argument portion of the brief or the record itself to determine and clarify the appellant's assertions, thereby wasting judicial resources, and, worse yet, creating the danger that the appellate court will interpret the appellant's contention differently than the appellant intended or his opponent understood.” *Id.*

Appellants’ fail to follow this format in their brief. In Point One, Appellants do not identify the ruling of the trial court that they are challenging. They only contest the analysis the court used in its Judgment, by stating that the court erred “most egregiously by not considering in depth the profound argument presented at the first trial and again at the remanded trial.” Appellants’ Brief at 3. In Point Four, Appellants do not claim any error of the trial court, but include the point “only for clarity.” *Id.* at 14. Point Five, includes no statement of the court’s error as to its ruling but only contests the attachment of Senate Bill 636.

Rule 84.04(d)(5) also requires that appellants provide a list of cases and the constitutional, statutory, or regulatory sources to support their legal arguments. Here, Appellants’ have provided no such list. In fact, Points Four and Five include absolutely no case or statutory authority for their arguments. For the foregoing reasons, the Court should dismiss this case for failure to comply with Rule 84.04.

III. RESPONSE TO APPELLANTS' POINT ONE: THE TRIAL COURT CORRECTLY HELD THAT HOUSE BILL 1171 DOES NOT VIOLATE THE SINGLE SUBJECT PROVISION OF THE MISSOURI CONSTITUTION BECAUSE BOTH SECTIONS OF THE BILL RELATE TO THE SAME SUBJECT OF "RELATING TO COURTS."

House Bill 1171 does not contain more than one subject because all provisions of the bill fairly relate to the same subject which is "relating to courts." The single subject provision of Article 3, Section 23 of the Missouri Constitution requires that "no bill shall contain more than one subject that shall be expressed in the title." The purpose of this constitutional provision keeps the legislators and the public "fairly apprised of the subject matter of the pending law." *Home Builders Ass'n v. State*, 75 S.W.3d 267, 269 (Mo. banc. 2002). The title must only indicate the subject of the legislation in a general way. *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc. 1997).

The Court decides whether a bill contains a single subject by determining if the bill fairly relates to the same subject; if it has "a natural connection" to the subject; or if it deals with means to accomplish its purpose. *C. C. Dillon Company v. City of Eureka, Missouri*, 12 S.W.3d 322, 328 (Mo. banc 2000). This analysis does not require courts to evaluate the relationship between individual provisions, but the individual provision and the title of the Bill. *Id.*

The title of House Bill 1171 is "An Act to repeal Sections 67.320 and 211.031, RSMo, and to enact in lieu thereof two new sections relating to courts." House Bill 1171 changed the age of the juvenile court's jurisdiction over a child involving a state or local

traffic violation from up to 15 ½ years old to 15. It also allowed certain counties of first class classification to establish county municipal courts that could prosecute violations of county orders, including traffic offenses.

Appellants argue that House Bill 1171's title of "relating to courts" is too broad because the state has multiple courts, such as a probate court and a small claims court. The only times, however, where bill titles were constitutionally overbroad were when their titles could describe theoretically all laws passed by the general assembly. *Jackson County Sports Complex Authority*, 226 S.W.2d 156, 161 (Mo. banc. 2007) citing *Home Builders Ass'n*, 75 S.W.3d at 272 (holding that "relating to property ownership" could encompass any legislation passed.) An example of the broad latitude allowed to bill titles is when the Supreme Court upheld the title of "political subdivisions" even though the term was defined differently more than 15 times in the Revised Statutes of Missouri. *Jackson County Sports Complex Authority*, 226 S.W.2d at 160. Further case law supports that broad latitude is given to title subjects in their specificity, such as "relating to health services" and "relating to environmental control. *See Missouri State Med. Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837, 841 (Mo. banc. 2001); *Corvera Abatement Tech. v. Air Conservation Comm'n*, 973 S.W.2d 851, 861-62 (Mo. banc 1998). "Relating to courts" generally indicates the subject of House Bill 1171, which meets the basic constitutional requirement for the single subject provision.

Appellants further argue that juvenile courts and the county population for municipal courts have no natural relationship to the other, specifically because they involve different titles within Missouri Statutes. Appellants' Brief at 3-4. The

Appellants, however, misstate the test to determine whether a bill meets the single subject provision. This Court has stated that the single subject provision does not involve an analysis of the relationship between the provisions. *C. C. Dillon Company*, 12 S.W.3d at 328. Therefore, it is irrelevant to state that because the county population creating a municipal court and the age of juvenile offenders are not directly related, House Bill 1171 is unconstitutional.

Juvenile Courts and municipal courts both have a natural connection to House Bill 1171's subject, namely "courts." The population of a county to establish a municipal court is an incident or means to achieve this purpose. The age of traffic violation offenders directly relates to the jurisdiction of juvenile courts. Therefore, House Bill 1171 is constitutional under the single subject provision.

IV. RESPONSE TO APPELLANTS' POINT TWO: THE TRIAL COURT CORRECTLY TAXED COSTS OF SERVICE ON THE ATTORNEY GENERAL UNDER THE REQUIREMENTS OF SECTION 527.110, RSMo BECAUSE THIS CASE AFFECTS THE VALIDITY OF A STATE STATUTE

Section 527.110, RSMo states that the attorney general of the state is entitled to service of a copy of the proceeding and to be heard in a proceeding concerning whether a statute, ordinance, or franchise is unconstitutional. Appellants argue that because their only complaint in this matter is the constitutionality of a House Bill and not a statute, service on the Attorney General was unnecessary to the proceeding. Appellants' Brief at 5. While the Appellants' Amended Petition only questions the constitutional validity of

House Bill 1171, the reason why this issue is in court today is because House Bill 1171 was enacted into a statute. Appellants are aware that the ultimate issue is the validity of a statute. They have stated that their claim "...will affect the citizens of Franklin County and the entire State by having an unconstitutional Bill ruled as such, thus preventing future legislatures from passing unconstitutional measures." *Id.* at 13.

Because the essence of this debate over House Bill 1121 is the statute it enacted, the attorney general must be served. Section 514.060, RSMo states that in all civil actions the party prevailing shall recover all costs incurred. Respondents rightfully served the attorney general in this matter incurring \$30.00 in fees. Respondents received a judgment in their favor. Therefore, it was appropriate for the trial court to tax the costs to the Appellants.

V. RESPONSE TO APPELLANTS' POINT THREE: THE TRIAL COURT CORRECTLY HELD THAT THE APPELLANTS' PRAYER FOR RELIEF IS INSUFFICIENT BECAUSE IT REQUIRES THE COURT TO MAKE AN UNCONSTITUTIONAL ADVISORY OPINION

The Appellants' prayer for relief requests an unlawful advisory opinion. Missouri Supreme Court Rule 55.05 requires that a pleading contain "a demand for judgment for relief to which the pleader claims to be entitled." It is outside of the Court's authority to offer advisory opinions on issues that may arise in the future. *City of Springfield v. Sprint Spectrum, LP*, 203 S.W.3d 177 (Mo. 2006); *See also, Schottel v. State*, 159 S.W.3d 836, 841 (Mo. 2005).

Appellants' prayer for relief in their Second Amended Petition states in its entirety that, "PLAINTIFFS PRAY this court upon due consideration of all facts presented, rule that House Bill 1171 violates the Missouri Constitution, Articles III Sections 21 & 23 and is unconstitutional, null and void." The Amended Petition only incorporated the allegations from their Original Petition, and did not include the Original Petition's prayer for relief. Appellants admit that they request "no specific relief." R. 36. They only seek for the court to determine the constitutionality of House Bill 1171.

The constitutionality of House Bill 1171 has no effect on the outcome of whether the Franklin County Municipal Court may prosecute cases. Senate Bill 636 makes the same amendments to Section 67.320 that House Bill 1171 does. Appellants made no argument in their pleadings that Senate Bill 636 violated the single subject or original purpose provisions of the Missouri Constitution. At trial, Appellants argued that the purpose of the court to rule on the constitutionality of House Bill 1171 was so they could see if Franklin County enacted the Municipal Court in accordance with Senate Bill 636, and then decide whether to file suit contesting the Senate Bill. Appellants' Brief at 13. Without discussion of Senate Bill 636 in this present case, a ruling on the constitutionality of House Bill 1171 could not bring about any kind of relief.

Appellants argue that the prayer for relief is not part of the petition and that the lack of any request for relief should not bar this Court from making a decision. Appellants' Brief at 6. They assert that the Court should determine the relief based on the facts pled. *Id.* However, the Appellants still do not attempt to explain how finding House Bill 1171 would bring about relief for the facts they pled. The controversy in

Appellants' Amended Petition is academic and hypothetical. Because the Appellants call upon the Court to make an advisory opinion, the Court should uphold the trial court judgment.

**VI. RESPONSE TO APPELLANTS' POINTS FOUR AND FIVE:
APPELLANTS CITE NO REVERSIBLE ERROR FOR THIS COURT
TO DECIDE**

Appellants do not claim any reversible error in Points Four and Five of their brief. Point Four criticizes the trial court for including in its Judgment a footnote that contained Count II of Appellants' Original Petition. Point Five criticizes the trial court for attaching a copy of a Senate Bill to the Judgment. Appellants fail to give any argument that the inclusion of a footnote and an attachment of any document to an opinion are reversible errors. They have not provided any legal authority for why this Court should reverse the trial court's judgment based on these critiques.

**VII. RESPONSE TO APPELLANTS' POINT SIX: ENTRY OF STEVEN
WHITE IS APPROPRIATE BECAUSE HE WAS LAWFULLY
APPOINTED AS AN ASSISTANT TO THE COUNTY COUNSELOR**

Appellants argue that only the county counselor has the authority to make entry to defend the county in civil suits or actions. It appears that the Appellants read the singular word "counselor" in Section 56.640.1, RSMo to mean that the legislature intended only one human being to handle all of the legal matters of a First Class County. This is an inaccurate reading of the statute for two reasons: First, other statutes within Chapter 56, RSMo authorize assistant county counselors to represent the County. Section 56.640.1,

RSMo reads: “If a county counselor is appointed, the county counselor and the county counselor's assistants under the county counselor's direction shall represent the county ...” Second, in order for Appellants’ argument to stand, this Court must ignore the language of 56.650 which states that “the county counselor may, with the approval of the county commission or governing body, employ such office personnel as are necessary in the discharge of the county counselor's official duties and such employees and assistants shall hold their positions at the pleasure of the county counselor and shall be paid monthly by the county commission or governing body out of the county treasury.” Section 56.650, RSMo. In order to give meaning to both statutes, the logical interpretation would be that the Commissioners choose the County Counselor; the County Counselor chooses his or her assistants; and the Commissioners indicate their approval by deciding whether or not to pay the assistants.

Additionally, the Missouri Revised Statutes have language that seems to assign tasks to a single individual but in actuality the tasks are delegated to assistants. Sections 27.050 and 27.060, RSMo under Appellants’ logic, seem to indicate that only the attorney general in his or her individual capacity shall appear on behalf of the State in every case in the court of appeals or the Supreme Court. Also under this logic, only the individual Attorney General will institute all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights or interests of the state. Similarly, Section 56.060, RSMo states that the singular prosecuting attorney prosecutes all criminal cases in the prosecutor’s county. It is commonly known that a prosecutor chooses assistants to accomplish the purpose of this statute.

The County Counselor, Mark Vincent, has lawfully chosen his assistants in his position for this matter, and the County Commissioners have approved their appointment. Therefore, in accordance with Section 56.640.1 this Court should accept the appearance of Steven White.

CONCLUSION

In conclusion, this case is moot because Appellants have not contested Section 67.320 in its most current form. Appellants also have not followed the proper procedure for Supreme Court Rule 84.04. Furthermore, the Court should uphold the trial court's Judgment because Appellants call upon the Court to make an unlawful advisory opinion of the validity of House Bill 1171. Constitutionally, House Bill 1171 does not violate the single subject provision because it has a natural connection to its subject, namely "relating to courts. For the foregoing reasons, the Respondents respectfully request this Court to dismiss this case or to uphold the trial court's Judgment.

Respectfully Submitted,

/s/ Steven White

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent via U.S. mail (postage prepaid) this 8th day of January, 2015, to:

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Steven White

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 3,934, exclusive of the cover, certificate of service, certificate required by Rule 84.06(c), signature block and appendix.

The undersigned further certifies that the electronic copies of this brief filed with the Court and served on the other parties were scanned for viruses and found virus-free through the Norton anti-virus program.

/s/ Steven White

Steven White